



Epstein Drangel LLP

60 East 42nd Street, Suite 2520, New York, NY 10165

T: 212.292.5390 • E: [mail@ipcounselors.com](mailto:mail@ipcounselors.com)

[www.ipcounselors.com](http://www.ipcounselors.com)

March 28, 2022

**VIA ECF**

Hon. Paul A. Engelmayer  
United States District Judge  
Thurgood Marshall  
United State Courthouse  
40 Foley Square  
New York, New York 10007

**Re: *Kelly Toys Holdings, Inc. v. Top Department Store d/b/a  
[www.squishmallowus.com](http://www.squishmallowus.com), et al.***

**Case No. 22-cv-558**

**Letter Regarding Defendants' Motion to Vacate**

Dear Judge Engelmayer,

We represent Plaintiff Kelly Toys Holdings, Inc. ("Plaintiff") in the above-referenced action ("Action").<sup>1</sup> On March 17, 2022, Defendants filed a motion to Vacate the Clerk's Certificate of Default ("Motion to Vacate"). (Dkts. 28-29). Thereafter, on March 21, 2022, the Court entered an Order directing Plaintiff to file a response by March 29, 2022. (Dkt. 30).

While Plaintiff does not agree with many of the factual statements and arguments made by Defendants in their Motion to Vacate, Plaintiff consents to vacating the Clerk's Certificate of Default so that this matter may be adjudicated on the merits.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

**EPSTEIN DRANGEL LLP**

BY: /s/ Danielle S. Futterman

Danielle S. Futterman

[dfutterman@ipcounselors.com](mailto:dfutterman@ipcounselors.com)

60 East 42nd Street, Suite 2520

New York, NY 10165

Telephone: (212) 292-5390

Facsimile: (212) 292-5391

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<sup>1</sup> Where a defined term is referenced herein but not defined, it should be understood as it is defined in the Glossary in the Proposed Complaint.

Defendants' motion to vacate entry of default, Dkt. 28, is granted as unopposed. Defendants are further ordered, by April 19, 2022, to file an answer or otherwise respond to plaintiff's complaint. Upon defendants' responsive filings, plaintiff shall have 14 days to file an amended complaint. No further opportunities to amend will ordinarily be granted. If plaintiff does amend, defendants shall, within 21 days of such amendment: (1) file an answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court, copying plaintiff, stating that they rely on the previously filed motion to dismiss. The Clerk of Court is respectfully directed to terminate the motion pending at Dkt. 28. SO ORDERED.

A handwritten signature in cursive script, reading "Paul A. Engelmayer". The signature is written in dark ink and is positioned above a horizontal line.

PAUL A. ENGELMAYER  
United States District Judge

Dated: March 29, 2022